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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA  
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10 LESLIE R. LEONARDO,  
11 Plaintiff,  
12 vs.  
13 NANCY A. BERRYHILL,  
14 ACTING COMMISSIONER OF SOCIAL  
15 SECURITY ADMINISTRATION,  
Defendant.

Case No. 2:18-cv-00279-APG-CWH

**ORDER**

16 Presently before the Court is Plaintiff's Application to Proceed In Forma Pauperis (ECF No. 1),  
17 filed on February 14, 2018.

18 **I. In Forma Pauperis Application**

19 Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to  
20 prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed in forma  
21 pauperis will be granted.

22 **II. Screening the Complaint**

23 Upon granting a request to proceed in forma pauperis, a court must screen the complaint under  
24 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and  
25 dismiss claims that are frivolous, malicious, file to state a claim on which relief may be granted, or seek  
26 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal  
27 for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under  
28 Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To

1 survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a  
2 claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3 In considering whether the complaint is sufficient to state a claim, all allegations of material fact  
4 are taken as true and construed in the light most favorable to the plaintiff. *Wyer Summit P’ship v.*  
5 *Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard  
6 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than  
7 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic  
8 recitation of the elements of a cause of action is insufficient. *Id.*

9 If a plaintiff’s complaint challenges a decision by the Social Security Administration (“SSA”),  
10 before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42 U.S.C. § 405(g); *see*  
11 *also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curium) (“Section 405(g)  
12 provides that a civil action may be brought only after (1) the claimant has been party to a hearing held  
13 by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the SSA  
14 denies a claimant’s application for disability benefits, the claimant may request reconsideration of the  
15 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an  
16 administrative law judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the  
17 decision by the Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a  
18 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

19 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a SSA  
20 decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.* An action for  
21 judicial review of a determination by the SSA must be brought “in the district court of the United States  
22 for the judicial district in which the plaintiff resides.” *Id.* The complaint should state the nature of  
23 Plaintiff’s disability, when Plaintiff claims he became disabled, and when and how he exhausted his  
24 administrative remedies. The complaint should also contain a plain, short, and concise statement  
25 identifying the nature of Plaintiff’s disagreement with the determination made by the Social Security  
26 Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify, reverse,  
27 or remand a decision if Plaintiff has exhausted his administrative remedies and timely filed a civil  
28 action. However, judicial review of the Commissioner’s decision to deny benefits is limited to

determining: (a) whether there is substantial evidence in the record as a whole to support the findings of the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

Here, Plaintiff alleges that on December 14, 2017, the Appeals Council denied her request for review, and, at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it appears Plaintiff has exhausted her administrative remedies. Plaintiff filed this claim within 60 days of this decision, and has provided details of the nature and date of her disability, and has alleged sufficient facts to state a claim for relief.

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1 Based on the foregoing and good cause appearing therefore,

2 IT IS ORDERED that:

3 1. Plaintiff's request to proceed in forma pauperis is GRANTED. Plaintiff will not  
4 be required to pay the filing fee of four hundred dollars.

5 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
6 prepayment of any additional fees or costs or giving security for them. This Order granting leave to  
7 proceed in forma pauperis does not extend to the issuance of subpoenas at government expense.

8 3. The Clerk of Court must file the Complaint.

9 4. The Clerk of the Court must serve the Commissioner of the Social Security  
10 Administration by sending a copy of the summons and Complaint by certified mail to: (1) Office of  
11 Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899, San  
12 Francisco, California 94105-1545; and (2) the Attorney General of the United States, Department of  
13 Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.

14 5. The Clerk of Court must issue a summons to the United States Attorney for the District  
15 of Nevada and deliver the summons and Complaint to the U.S. Marshal for service.

16 6. From this point forward, Plaintiff must serve on Defendant or, if appearance has been  
17 entered by an attorney, on the attorney, a copy of every pleading, motion or other document submitted  
18 for consideration by the Court. Plaintiff must include with the original paper submitted for filing a  
19 certificate stating the date that a true and correct copy of the document was personally served or sent by  
20 mail to the defendants or counsel for the defendants. The Court may disregard any paper received by a  
21 district judge or magistrate judge that has not been filed with the Clerk, and any paper received by a  
22 district judge, magistrate judge or the Clerk that fails to include a certificate of service.

23 DATED: February 28, 2018

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26 C.W. Hoffman, Jr.  
United States Magistrate Judge  
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